

OCT 13 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

✓
✓
✓
✓
✓
✓
✓
✓
✓
✓

CC Docket No. 92-133

No. of Copies rec'd
List A B C D E

 $0 + 5$

of return for rate base regulated carriers.³ Indeed, GSA contends:

The sharing zone and formula adjustment mark [in the price cap formula] were thus inextricably linked to the authorized rate of return. The achievement of just and reasonable rates, indeed the very legality of the LEC price cap plan, depends upon the maintenance of this linkage.⁴

MCI is much less expansive, contending only that the new procedures to be adopted in this proceeding be utilized when, and if, a new price cap LEC rate of return needs to be prescribed.⁵

It is not entirely clear where GSA is coming from, but unlike the Democratic Presidential nominee, it does appear that the agency has "inhaled." The entire reason for price cap regulation is the express recognition by the Commission that rate base/rate of return regulation is inefficient and economically suboptimal.⁶ Thus, price cap regulation is viewed as superior precisely because it breaks the link between rate base/rate of return principles and carrier performance. The sharing system in the LEC price cap regulatory structure is itself an anomaly because it retains some vestiges of rate of return regulation -- unnecessary vestiges we would submit -- and the far superior price cap structure is that imposed upon the American Telephone

³See Comments of GSA, filed herein Sept. 11, 1992, at 2-6.

⁴Id. at 4.

⁵See Comments of MCI, filed herein Sept. 11, 1992, at 4.

⁶See Policy and Rules Concerning Rates for Dominant Carriers, Further Notice of Proposed Rule Making, 3 FCC Rcd. 3195, 3219-23 ¶¶ 38-47 (1988); Second Report and Order, 5 FCC Rcd. 6786, 6789-91 ¶¶ 21-37 (1990).

and Telegraph Company ("AT&T") in which there is no sharing.

In any event, GSA's argument is completely backwards, in that it assumes that the Commission labors under a legal imperative to maximize the rate of return drag on price cap regulation. Price cap carriers are encouraged to look to the marketplace to adjust their costs of capital based upon economic performance. It would be arbitrary and unnecessary to engage in further adjustments from a regulatory perspective.

MCI's position is considerably more modest. Essentially, MCI contends that the new procedures adopted in this proceeding should apply to price cap LECs when and if a new rate of return prescription applicable to those carriers is commenced. MCI contends that "it is highly doubtful that a separate set of procedures would be established to derive an authorized ROR for price cap sharing and lower adjustment mark purposes, different from the ROR set under Part 65 for ROR-regulated LECs."⁷ MCI's position thus appears grounded in administrative efficiency. Of course, had the Commission decided to include price cap LECs in the scope of the new rules, it would have said so in the Notice of Proposed Rulemaking herein so that USWC and others could have commented in detail upon the proposed new rules.⁸

However, the interests of administrative efficiency are also served by the exclusion of USWC from the scope of this

⁷Comments of MCI at 3.

⁸See Notice of Proposed Rulemaking and Order, 7 FCC Rcd. 4688 (1992).

proceeding. If USWC were to be covered by the new rules, it would have been incumbent on USWC to analyze and comment on the proposal at length, and the Commission would have needed to analyze these comments. As it is possible that, given the realities of price cap regulation, USWC will never have another rate of return prescription, USWC and the Commission would have been in the position of devoting time and resources to a USWC position on new rules which could well never be applied to USWC. Administrative efficiency is thus served by excluding USWC and other price cap LECs from the scope of this proceeding in order to better focus attention on those carriers actually and immediately subject to the new rules.

MCI also argues that the vacated "automatic refund rules," including category refunds, ought to be reinstituted.⁹ MCI's logic is that the Commission no longer prescribes a "minimum" rate of return.¹⁰ In other words, MCI wants the Commission to not only resuscitate the automatic refund concept for rate of return enforcement, but to do so in direct conflict with the court decision in American Tel. & Tel. Co. v. F.C.C.¹¹ While we

⁹See Comments of MCI at 31.

¹⁰Indeed, MCI proclaims that the myriad of past Commission decisions prescribing such a minimum have not meant what they said, because "[t]he prescribed ROR is not (and, as the LECs know, really never has been) a minimum at all; only a maximum." Id. (footnote omitted).

¹¹836 F.2d 1386 (D.C. Cir. 1988) ("AT&T"). Apparently MCI contends that, because the prescribed rate of return now exceeds the minimum necessary to raise capital, the requirement of AT&T that carriers be allowed the opportunity to earn the prescribed
(continued...)

continue to believe that the whole notion of "overearning" and overearning refunds is arbitrary and contrary to the public interest, simply reinstituting a set of rules already vacated by a court would seem to be the worst possible approach to this issue. If the Commission continues to be so set on this matter, it should treat overearnings as a kind of unexpected efficiency gain (which is really what overearnings represent). This efficiency gain could be shared to some extent with customers via rate reductions or refunds, at the LEC's option. But in no event should overearnings be treated as a Communications Act violation giving rise to any "rights" on behalf of customers who paid the lawful tariffed rate.

Respectfully submitted,

U S WEST Communications, Inc.

By: Robert B. McKenna / A. Lim
Lawrence E. Sarjeant
Robert B. McKenna
1020 19th Street, N.W.
Suite 700
Washington, D.C. 20036
(202) 429-0303

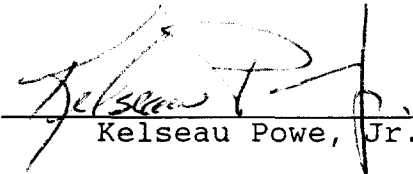
Its Attorneys

October 13, 1992

¹¹(...continued)
rate no longer applies. There is simply no basis for such a crabbed reading of the AT&T decision.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify on this 13th day of October, 1992, that I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST COMMUNICATIONS, INC.** to be mailed via first class mail, postage prepaid, to the persons named on the attached service list.


Kelseau Powe, Jr.

*** via hand delivery**

*Cheryl A. Tritt, Chief
Common Carrier Bureau
Federal Communications
Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

*James D. Schlichting, Chief
Policy and Program Planning
Division
Federal Communications
Commission
1919 M Street, N.W.
Room 544
Washington, D.C. 20554

*Kenneth P. Moran
Accounting and Audits Division
Federal Communications
Commission
2000 L Street, N.W.
Suite 812
Washington, D.C. 20036

*Downtown Copy Center
Federal Communications
Commission
1990 M Street, N.W.
Room 640
Washington, D.C. 20036

*Jane Jackson, Chief
Accounting and Audits Division
Legal Branch
Federal Communications
Commission
2000 L Street, N.W.
Suite 257
Washington, D.C. 20036

Carolyn C. Hill
ALLTEL Service Corporation
1710 Rhode Island Ave., N.W.
Suite 1000
Washington, D.C. 20036

*William Kehoe
Accounting and Audits Division
Legal Branch
Federal Communications
Commission
2000 L Street, N.W.
Suite 257
Washington, D.C. 20036

William B. Barfield
M. Robert Sutherland
BellSouth Telecommunications,
Inc.
1155 Peachtree Street, N.E.
Suite 1800
Atlanta, GA 30367

*Sonja Rifkin
Accounting and Audits Division
Legal Branch
Federal Communications
Commission
2000 L Street, N.W.
Suite 257
Washington, D.C. 20036

James R. Young
Leslie A. Vial
Bell Atlantic Telephone
Companies
1710 H Street, N.W.
Washington, D.C. 20006

Thomas E. Taylor
William D. Baskett, III
Christopher J. Wilson
Frost & Jacobs
2500 Central Trust Center
201 East Fifth Street
Cincinnati, OH 45202

Michael A. Gotstein
Casco Telephone Company
212 Church Avenue
P.O. Box 126
Casco, WI 54205-0126

Mark H. Blake
Community Service Telephone
Company
33 Main Street
Winthrop, ME 04364

Marc A. Stone
Fred Williamson & Associates,
Inc.
2921 East 91st Street
Suite 200
Tulsa, OK 74137-3300

Carol F. Sulkes
Central Telephone Company
8745 Higgins Road
Chicago, IL 60631

B. Earl Hester, Jr.
Lexington Telephone
Company
200 North State Street
P.O. Box 808
Lexington, N.C. 27293

Theodore D. Frank
Vonya B. McCann
Arent, Fox, Kintner, Plotkin
& Kahn
1050 Connecticut Ave., N.W.
Washington, D.C. 20036-5339

Frank W. Krogh
Donald J. Elardo
MCI Telecommunications
Corporation
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Curtis W. Barker
Delhi Telephone
Company
107 Main Street
P.O. Box 271
Delhi, NY 13753

Dennis Mullins
Vincent L. Crivella
General Service Administration
18th & F Street, N.W.
Room 4002
Washington, D.C. 20405

Andrew D. Jader
Nebraska Central Telephone
Company
P.O. Box 700
Gibbon, NE 68840

John N. Rose
OPASTCO
2000 K Street, N.W.
Suite 205
Washington, D.C. 20006

Joanne Salvatore Bochis
National Exchange Carrier
Association, Inc.
100 S. Jefferson Road
Whippany, NJ 07981

David Cosson
L. Marie Guillory
National Telephone
Cooperative Association
2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

Donald W. Gruneisen
Nicholville Telephone
Company, Inc.
P.O. Box 122
Nicholville, NY 12965-0122

Alan B. Terrell
Rochester Telephone
Company, Inc.
P.O. Box 507
Rochester, IN 46975

James P. Tuthill
Lucille M. Mates
Pacific/Nevada Bell
140 New Montgomery Street
Room 1526
San Francisco, CA 94105

Josephine S. Trubek
Michael J. Shortley, III
Rochester Telephone Corporation
180 South Clinton Avenue
Rochester, NY 14646

James L. Wurtz
Pacific/Nevada Bell
1275 Pennsylvania Ave., N.W.
Washington, D.C. 20004

J. Allen Layman
Roanoke and Botettourt
Telephone Company
P.O. Box 174
Daleville, VA 24083

Linda D. Hershman
Southern New England
Telephone Company
227 Church Street
New Haven, CT 06506

Thomas P. Kerester
Barry Pineles
U.S. Small Business
Administration
409 3rd Street, S.W.
Washington, D.C. 20416

Jay C. Keithley
United Telephone Companies
1850 M Street, N.W.
Suite 1100
Washington, D.C. 20036

Frank M. Sahlman, Sr.
Topsham Telephone Company, Inc.
Box 1075
East Corinth, VT 05040

W. Richard Morris
United Telephone Companies
P.O. Box 11315
Kansas City, MO 64112

Martin T. McCue
U.S. Telephone Association
900 19th Street, N.W.
Suite 800
Washington, D.C. 20006

Durward D. Dupre
Richard C. Hartgrove
Southwestern Bell Telephone
Company
1010 Pine Street
Room 2114
St. Louis, MO 63101

Ray J. Riordan
Wisconsin State Telephone
Association
6602 Normandy Lane
Madison, WI 53719

Charles D. Metcalf
UTELCO, Inc.
827 16th Street
P.O. Box 88
Monroe, WI 53566-0088